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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,)

15 Plaintiff,)

16 v.)

17 ALDO OSORNIO,)

18 Defendant.)

Case No. CR 05-00172 MAG

MOTION FOR SUMMONS

20 Based on the facts set forth in the Declaration of Hilary G. Ley in Support of the United
21 States' Motion for Summons, the United States hereby requests that the Court issue a summons
22 for defendant Aldo Osornio. The facts set forth in the declaration demonstrate that probable
23 cause exists to summon the defendant to answer the information that has been filed by the United
24 States Attorney.

25 Respectfully submitted,

26 KEVIN V. RYAN
27 United States Attorney

28 Dated: 6/7/05

/s/ Hilary G. Ley
HILARY G. LEY
Law Clerk

MOTION FOR SUMMONS
Case No. CR 05-00172 MAG

IT IS SO ORDERED

MARIA-FI ENA JAMES

FILED

JUN 09 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 KEVIN V. RYAN (CSBN 118321)
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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
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15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 ALDO OSORNIO,

19 Defendant.
20

Case No. CR 05-00172 MAG

**DECLARATION OF HILARY G. LEY
IN SUPPORT OF UNITED STATES'
MOTION FOR SUMMONS**

21 I, Hilary G. Ley, hereby declare as follows:

22 1. I am a Law Clerk in the United States Attorney's office assigned to prosecute this case. I
23 have received the following information from reports and other documents provided to me by the
24 United States Park Police ("USPP").

25 2. On February 9, 2005, at approximately 12:30 a.m., USPP Officer Collins ("Collins")
26 responded to an area of the Presidio, West Pacific Avenue and 5th Avenue, for a report of a
27 vehicle driving at a high rate of speed. Collins and USPP Officer Johnson ("Johnson") stopped
28 the vehicle as it was traveling east on a service vehicle only portion of West Pacific Avenue.

1 Driving on a service road is prohibited by the Code of Federal Regulations. After stopping the
2 vehicle, Collins contacted the driver, later identified as Aldo Osornio ("Osornio").

3 3. As Collins approached Osornio, he smelled the distinct odor of alcohol emanating from
4 the interior of the vehicle. Collins also immediately noticed that Osornio's eyes appeared
5 bloodshot and watery. When asked where he was driving from, Osornio stated he was coming
6 from a bar in the Fillmore area. After being asked about his drinking, Osornio claimed to have
7 had five to six Guinness beers earlier that evening.

8 4. Based on Osornio's admissions, coupled with Collins' observations of his physical
9 condition, Collins requested that Osornio complete a number of field sobriety tests ("FSTs").
10 Collins then escorted Osornio to the test surface, a flat and dry area on the pavement. The area
11 was lit by streetlights and the Officer's flashlights. Prior to beginning the tests, Collins provided
12 Osornio with detailed instructions and physical demonstrations as to each test and Osornio stated
13 he understood the instructions. The following FSTs were then performed: (1) One Leg Stand; (2)
14 Walk and Turn; (3) Romberg Stand; and (4) Preliminary Alcohol Screen ("PAS").

15 5. During the administration of the One Leg Stand, Collins observed that Osornio had his
16 hands crossed in front of him, in violation of the instructions. Osornio was unable to keep one leg
17 raised for the requisite time as directed. When he lifted his right foot, he dropped it within ten
18 seconds; the left was dropped within three seconds. Osornio then informed Collins that he could
19 not pass the test and did not wish to continue.

20 6. While administering the Walk and Turn, Collins observed Osornio step off the line three
21 times during instruction. Osornio took two crooked steps, stopped, and stated, "I'm not gonna
22 pass" and "I can't walk straight." When asked by Collins if he wanted to try again, Osornio
23 responded, "I'm not gonna waste your time."

24 7. During the Romberg Stand, Osornio was instructed to count out loud until he reached
25 thirty. Osornio only counted out loud until he reached ten. Collins observed that Osornio never
26 closed his eyes, in violation of the instructions. Osornio's body swayed two to three inches in all
27 directions during the test. In addition, Osornio erred by fifteen seconds in counting thirty
28

1 seconds (his thirty seconds was actually forty-five seconds).

2 8. At 12:58 a.m., Osornio provided a breath sample for the PAS, which registered 0.197%
3 Blood Alcohol Content ("BAC"). Osornio's second breath sample, given two minutes later,
4 registered at 0.176% BAC.

5 9. Collins placed Osornio under arrest for Driving Under the Influence and was then
6 transported to 1217 for processing. After being read the chemical test admonishment, Osornio
7 agreed to provide a breath sample. Osornio's first breath sample registered his BAC at 0.204%.
8 One minute later, Osornio's second breath sample also registered his BAC at 0.204%.

9 10. Osornio failed to appear on March 23, 2005. He signed his citation indicating a promise
10 to appear on that date.

11 11. I declare under penalty of perjury that the foregoing is true and correct to the best of my
12 knowledge and belief. Executed June 7, 2005, at San Francisco, California.

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14 DATED: 6/7/05

Respectfully submitted,

15 KEVIN V. RYAN
16 United States Attorney

17 /s/ Hilary G. Ley
18 HILARY G. LEY
19 Law Clerk, United States Attorney's Office
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